

USE AGREEMENT

This USE AGREEMENT is entered into between the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), acting through the DEPARTMENT OF ENERGY (hereinafter referred to as "DOE"), and Perry S. McKay (hereinafter referred to as the "Grantor"),

WITNESSETH THAT:

WHEREAS, DOE, through its authorized representatives, agents, contractors, and subcontractors desires to perform, pursuant to Public Laws 95-91, Department of Energy Organization Act, and 96-463, Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by 99-499, Superfund Amendments and Reauthorization Act of 1986, certain data-gathering, testing, exploration, and other work on the Grantor's portion of property as shown within Parcel "A" on the map attached hereto as Exhibit A in connection with DOE's Interagency Agreement dated January 22, 1991: and

WHEREAS, DOE has entered into a Settlement Agreement known as McKay, et al. vs United States of America et al., Civil Action No. 75-M-1162, dated December 14, 1984 and continues to recognize it's obligation under said agreement: and

WHEREAS, the current sampling project is expected to verify the prior test results: and

WHEREAS, the Grantor owns and controls the property designated in Exhibit A;

NOW THEREFORE, it is agreed that:

1. The Grantor owns and controls certain real property (hereinafter referred to as the "Property"), designated in Exhibit A, and hereby grants to DOE, its authorized representatives, agents, contractors, and subcontractors across, and over the Property to carry out the environmental monitoring activities as described in Exhibit B; PROVIDED,

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that such right of entry is subject to existing easements for public roads and highways, public utilities, railroads and pipelines; PROVIDED FURTHER, that such grant of right of entry reserves to the Grantor, his heirs, executors, administrators, successors and assigns, all right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights hereby granted to DOE, its authorized representatives, agents, contractors, and subcontractors.

2. The Government shall be responsible for any loss or destruction of, or damage to, the Grantor's real and personal property caused by the activities of DOE in exercising any of the rights hereby granted in this Use Agreement: PROVIDED, that such responsibility shall be limited to restoration of such real and personal property to its condition on the effective date of the Use Agreement.
3. The provisions of this Use Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of the Grantor. The Grantor shall notify the Realty Officer if the Property is, or at any time during the term of the Agreement should become leased, sold, or otherwise transferred to another party. The "Realty Officer" means the person executing this Use Agreement on behalf of the Government, and any other officer or civilian employee who is properly designated Realty Officer; and the term includes, except as otherwise provided in this Use Agreement, the authorized representative of a Realty Officer acting within the limits of his authority. The Grantor shall also give written notice to any purchaser, lessee, or transferee of the applicability of the rights of the Government contained in this Use Agreement when such purchase, lease, or transfer takes place during the term of this Use Agreement.
4. The effective date of this Use Agreement shall be the later of the date of execution by the Government or October 1, 1992. The term of this Use Agreement shall commence on the effective date hereof and shall continue for a period of three (3) months unless sooner terminated by the Government or Grantor by giving five (5) working days prior written notice

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to the other. The Government shall provide to the Grantor two (2) days prior to entry on the property, specifying the time and date of the sampling, so that an agent of Grantor may be present.

5. Title to all personal property brought to the Property by DOE during the term of this Use Agreement shall remain in the Government, and such title shall not be effected by incorporation or attachment thereof to any property not owned by the Government, nor shall such personal property, or any part thereof, become a fixture or lose its identity as personal by reason of affixation to any realty. DOE shall remove all such personal property no later than five (5) days after the expiration or termination of the Use Agreement.

The Grantor shall not be liable for any loss of or damage to Government-owned or Government-Furnished property, or for expenses incidental to such loss or damage, except that the Grantor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from the willful misconduct, gross negligence, or lack of good faith of the Grantor.

6. The Government shall have unlimited rights in all technical data first produced or specifically used in the performance of the work and experiments in connection with this Use Agreement. However, the Government shall provide Grantor with split samples and also shall provide Grantor with all data obtained and any analysis thereof. Further, technical reports from DOE contractors or subcontractors shall be required for delivery to the Government and shall be made available to the public without restriction. For the purposes of this Use Agreement, the terms "technical data" and "unlimited rights" shall have the same meaning as provided in 927.401/Department of Energy Acquisition Regulation (DEAR).
7. DOE shall obtain all necessary permits or licenses and abide by all applicable Government, state, and local laws, regulations, and ordinances.
8. If the Property is subject to any leases, subleases, or assignments of rights, the Grantor shall obtain the consent of


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the lessors, lessees, sublessees, and assignees as appropriate, to enter into this Use Agreement. Such consent shall be evidenced by their signatures in the space provided on the signature page.

In WITNESS WHEREOF, the parties hereto have executed this Use Agreement in several counterparts.

GRANTOR:

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By: 
PERRY S. MCKAY
1113 Spruce Street - Suite #201
Boulder, CO 80302

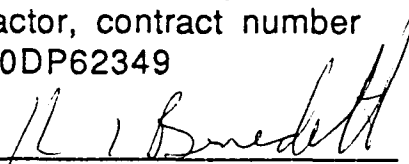
By: 
Steven R. Schiesswohl
RFO Realty Officer
Property & Information
Management Branch

Rocky Flats Office
P.O. Box 928
Golden, Colorado
80402-0928

Date: _____

Date: 3/5/93

Concurred by EG&G Rocky Flats, Inc.
DOE Contractor, contract number
DE-AC04-90DP62349

By: 

Title: Acting RFO

Date: 1-8-93

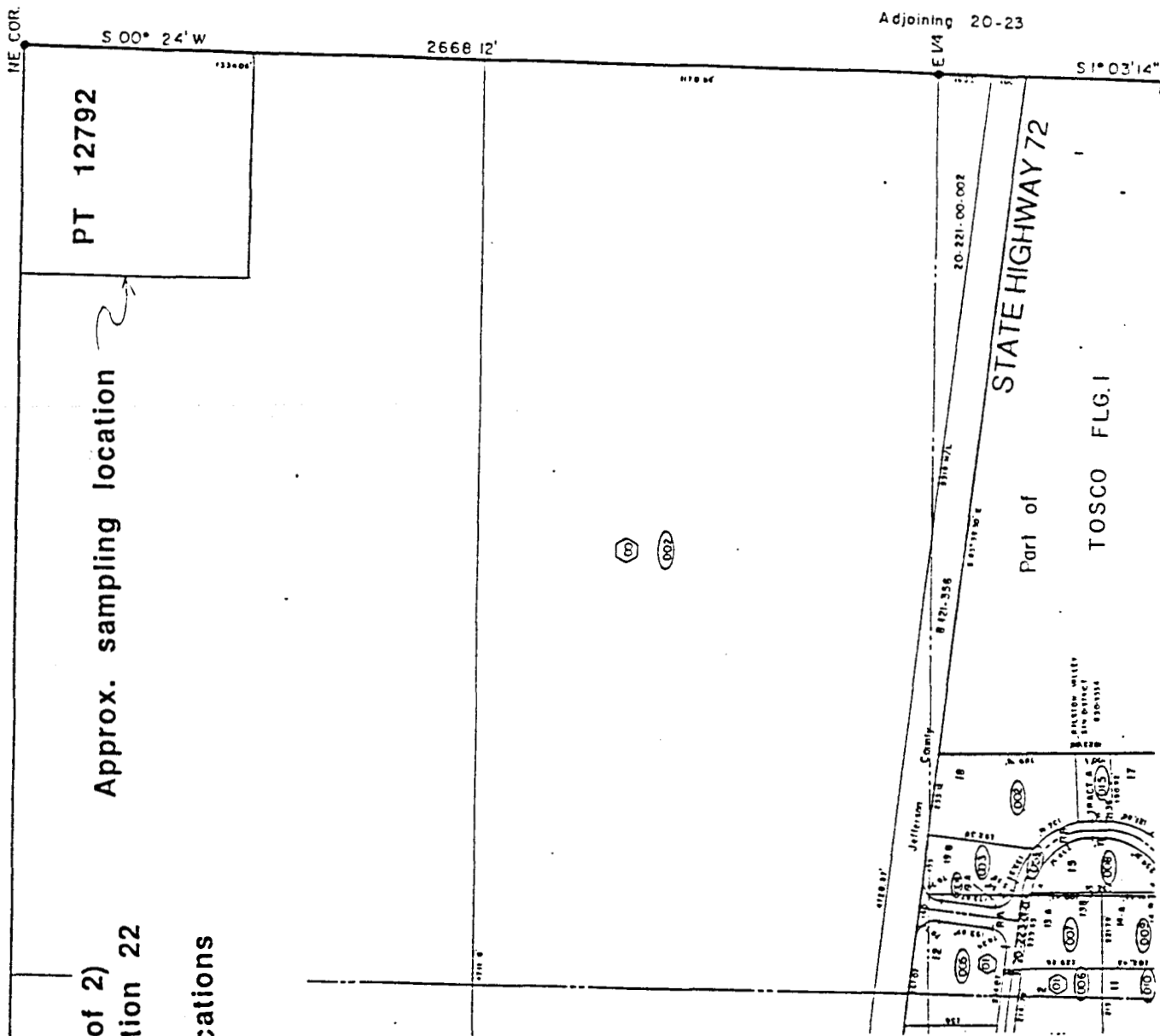
Consented to:

Names

Interest

Signature

Exhibit A: Map (page 1 of 2)
NE1/2 of NE1/4 of Section 22
T.2S. R.70W.
Proposed Sampling Locations
PT 12792
Owner: Perry S. McKay



R O C K Y

F L A T S

U S A. 2
2662-232

Exhibit A: Map (page 2 of 2)

E1/2 of Section 23

T.2S. R.70W.

Proposed Sampling Locations

PT 13192, PT13292

Owner: Perry S. McKay

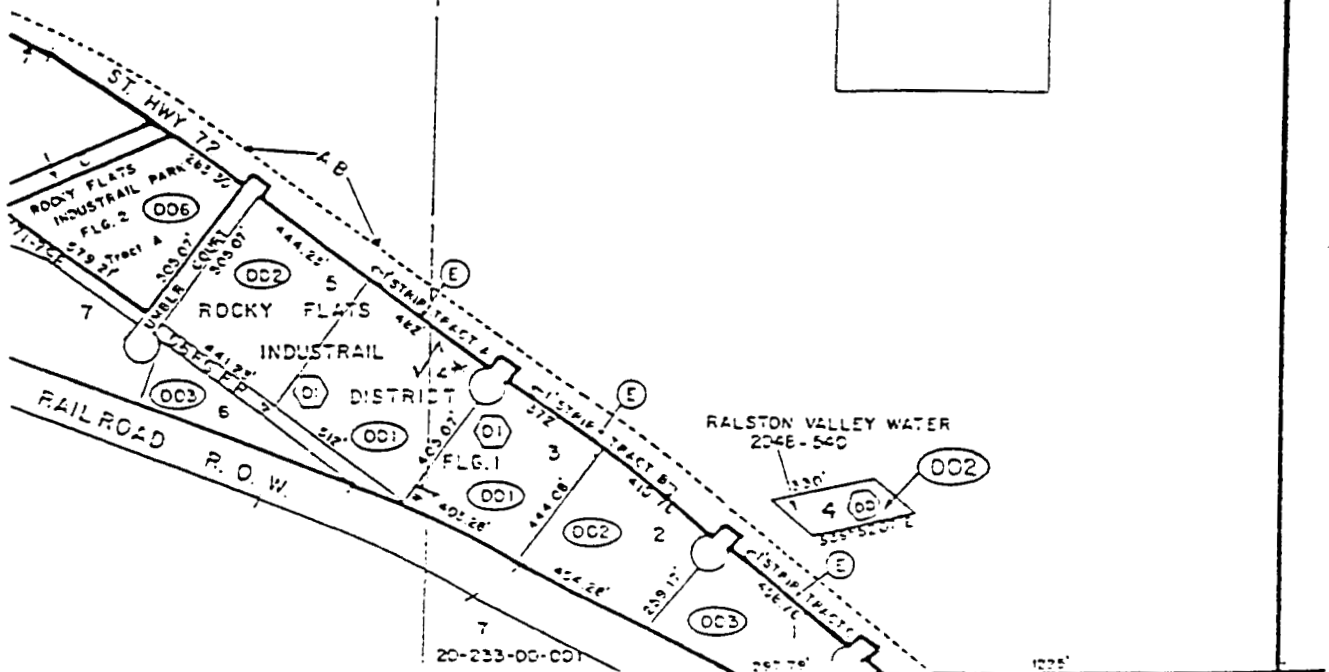
PT 13192

Approx. sampling locations

PT13292

20-234-00-001

3



Adjoining 20-26

LAST M.B.B. KEY NO. USED IN SEC. 23 17

SE SW

EXHIBIT B

OU 3 RFI/RI SAMPLING ACTIVITY DESCRIPTIONS -Perry S. McKay

The planned OU 3 sampling activities are detailed in the RFI/RI Work Plan. The Work Plan outlines the purpose, objectives, rationale and methods used to evaluate the presence or absence of contamination within OU 3. The Work Plan is based on the requirements of the Interagency Agreement (IAG) between the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the State of Colorado Department of Health (CDH).

OU 3 sampling activities began in April, 1992 and are scheduled for completion by spring of 1993. A Final RFI/RI Report which details the results and conclusions from this study is scheduled for completion in January, 1994. The Access Agreement period is extended for three years to cover any follow up activities that may be required during development of the Final RFI/RI Report.

The map, attached to this correspondence, shows the location of the sampling activity. The sample location will be surveyed prior to, or during the sampling event. Field adjustments could be made at the time of sampling to adjust specific sampling locations.

Sampling activities will not adversely effect environmental resources. OU 3 sampling activities on Perry S. McKay property involve collection of soil data. The collection of surface soil samples involves removing one quarter to one half inch of surface soil from a 3 X 3 inch square in 25 locations within a ten acre plot. The ten acre plot locations are shown on the Exhibit A map.